

Ms. Gibson, PLME
14657

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-197465

DATE: August 19, 1980

MATTER OF: Herschel S. Pilloff - Claim for retroactive temporary promotion and backpay

DIGEST: Employee assigned duties of abolished higher-grade position is not entitled to retroactive temporary promotion since he was not detailed to classified, established position. Furthermore, employee's classification claim is not within jurisdiction of General Accounting Office.

Mr. Herschel S. Pilloff appeals our Claims Division Settlement No. Z-2803286, dated May 18, 1979, denying his backpay claim based on our Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975), affirmed at 56 id. 427 (1977). Those decisions hold that if an employee is detailed to a position classified at a higher grade for a period in excess of 120 days without prior Civil Service Commission (CSC) approval, he or she is entitled to a retroactive temporary promotion and backpay for such period provided all qualifications and other requirements for such promotion are met. See paragraph 8C, Federal Personnel Manual (FPM) Bulletin No. 300-40, May 25, 1977.

On October 27, 1974, Mr. Pilloff was promoted to the GS-14, position description No. 74-138, Physicist (General), in the Office of Naval Research, Department of the Navy (Navy). This position description was established April 26, 1974. On May 1, 1974, a vacancy announcement was issued by the Navy which advertised a position listed as "Physicist (General), GS-1310-14 or 15 (one position)." It is unclear whether Mr. Pilloff filled this position. The Navy states that a GS-15 position was vacant at the time position description No. 74-138 was established, however, it was position description No. 70-149. The Navy further states that the GS-15 position was subsequently cancelled before Mr. Pilloff qualified for promotion under the time-in-grade requirements of the Whitten Amendment. Nevertheless, Mr. Pilloff claims that he was detailed to the higher-grade position from October 27, 1974, to May 21, 1978, on which date he received a career promotion to a GS-15 position established on May 19, 1978. In support of his contention, Mr. Pilloff asserts that he was assigned responsibilities commensurate with the higher level, and that his duties equaled or exceeded those performed by his GS-15 predecessor. Furthermore, Mr. Pilloff argues

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that the Navy's reclassification of his position in May 1978 constitutes proof that he had been performing GS-15 duties since October 27, 1974. Accordingly, Mr. Pilloff requested a retroactive promotion with backpay for the period beginning on October 27, 1975, the date on which he became eligible for promotion to grade GS-15, to May 21, 1978.

Mr. Pilloff's claim was denied by the Navy and subsequently by our Claims Division. Both disallowances were predicated on the fact that there was no established classified position to which Mr. Pilloff could have been detailed during the period covered by his claim.

As a general rule, an employee is entitled only to the salary of the position to which he is officially appointed regardless of the duties he performed. We have recognized a limited exception where an employee has been detailed to a higher-grade position for an extended period without Civil Service Commission approval. Turner-Caldwell, above. One of the requirements for recovery of backpay under Turner-Caldwell is that the detail must have been to an established position, classified under an occupational standard to a grade or pay level. See paragraph 4, FPM Bulletin No. 300-40, May 25, 1977. Accordingly, an employee is not entitled to a retroactive temporary promotion for performing duties of a higher-level position which has been abolished and is therefore no longer classified and established. Kenneth J. Wood, B-198059, May 19, 1980. The record indicates that the GS-15 position to which Mr. Pilloff claims he was detailed had been abolished before he was eligible for promotion to that position. Therefore, we must deny his claim for retroactive promotion and backpay.

Whether Mr. Pilloff was performing at a grade higher than the GS-14 level to which he was officially assigned is a classification matter. Classification claims are within the jurisdiction of the agency and the Office of Personnel Management (formerly Civil Service Commission). In this regard, the United States Supreme Court has held that neither the Classification Act nor the Back Pay Act creates a substantive right to backpay based on wrongful classification. See United States v. Testan, 424 U.S. 392 (1976).

Accordingly, we sustain the Claims Division's action in denying Mr. Pilloff's claim.



For the Comptroller General
of the United States